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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VINCENT BULLARD DANIEL,

Petitioner,

-v-

PEOPLE OF THE STATE OF NEW
YORK,

Respondent.

ORDER

23-CV-6374-EAW

Pro se petitioner Vincent Bullard Daniel (“Petitioner”) moves to proceed *in forma pauperis* (“IFP”) (Dkt. 8) and for copies of certain state court records from his underlying state court prosecution (Dkt. 7). For the following reasons, the motions are denied without prejudice.

I. Motion for IFP

Petitioner’s first motion to proceed IFP (Dkt. 2) was denied without prejudice because it was unsigned and because it did not include a prison certification section completed and signed by an authorized officer of the institution in which the prisoner is incarcerated, certifying both the amount presently on deposit in the prisoner’s inmate trust account and the prisoner’s average account balance during the last six months (Dkt. 3). See 28 U.S.C. § 1915(a)(1)-(2); Rule 3(a)(2) of the Rules Governing Section 2254 Cases; *see also* See *Fabrizio v. Annucci*, 9:20-CV-0011 (GTS/ML), 2020 WL 13801078, at *1 (N.D.N.Y. Mar. 9, 2020) (“Although [Petitioner] has paid the filing fee required for this action, *in forma pauperis* status affords [Petitioner] other benefits apart from deferring

full payment of the filing fee[.]” (citation and quotation marks omitted) (considering *in forma pauperis* motion notwithstanding payment of the filing fee).

Petitioner was advised that if he sought to proceed IFP he must submit a signed motion to proceed IFP that included (1) an affidavit or affirmation swearing that he is unable to pay the filing fee and (2) a prison certification of his inmate trust fund account. (Dkt. 3). Petitioner’s instant motion to proceed IFP (Dkt. 8) does not include a prison certification of his inmate trust fund account. See 28 U.S.C. § 1915(a)(1)-(2); Rule 3(a)(2) of the Rules Governing Section 2254 Cases. The IFP motion therefore is denied. If Petitioner seeks to proceed IFP he must submit a signed motion to proceed IFP that includes (1) an affidavit or affirmation swearing that Petitioner is unable to pay the filing fee and (2) a prison certification of Petitioner’s inmate trust fund account.¹

II. Motion for State Court Records

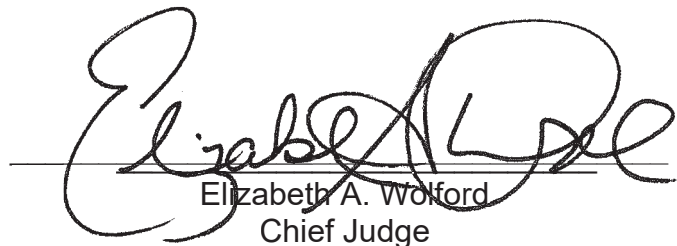
Petitioner seeks copies of certain state court records in his underlying criminal proceeding. This motion is denied without prejudice because the Court has ordered Respondent to file an answer to the petition, to state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted, and to include as exhibits to the answer full transcripts of these proceedings with any records and documents relating to them, so that the materials can be filed in the official record of this case. (Dkt. 3). If Petitioner does not receive copies of the state court records sought, he may re-submit a motion for such records.

¹ The Clerk of Court is directed to forward to the petitioner, along with this Order, the form motion to proceed *in forma pauperis* with supporting affirmation. The form also is available at <http://www.nywd.uscourts.gov/pro-se-forms>

CONCLUSION

For the foregoing reasons, Petitioner's motions to proceed IFP and for copies of certain state court records are denied without prejudice. If Petitioner seeks to proceed IFP he must submit a signed motion to proceed IFP that includes (1) an affidavit or affirmation swearing that Petitioner is unable to pay the filing fee and (2) a prison certification of Petitioner's inmate trust fund account.

SO ORDERED.



Elizabeth A. Wolford
Chief Judge
United States District Court

DATED: November 3, 2023
Rochester, NY